IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No. 494 of 2006
with
Notice of Motion No.2167 of 2006
in
Notice of Motion No.3921 of 2005
in
Summons for Judgment No.137 of 2005
in
Sum Suit No.3090 of 2004

M/s Reliance Celluiose Products Ltd. .Appellants
vs
M/s Sambhav Interchem Pvt Ltd. ..Respondents

Mr Snehal Shah i/b Manshuklal Hiralal & Co for appellants
Mr Shailesh Shah with Ms Hena Mehta for respondents.

CORAM: KSHITIJ R. VYAS, C.J., &
ABHAY S. OKA, J.
DATE: JULY 13, 2006.

P.C.:-

Heard the learned counsel for the parties. The appellants have challenged the condition of deposit of Rs.15 lacs within four weeks, imposed by the learned single Judge while passing the order dated June 8,2006 in the Notice of Motion No.3931 of 2005 in Suit No.3090 of 2004.

It is contended by the learned counsel for the appellants that without taking decision on merits in the summons for judgment, the court ought not to have asked the appellants to deposit the amount of Rs.15 lacs. He pointed out that the

summons for judgment was decided exparte, because of the default of the managing clerk of the advocate, the defendants could not remain present in court. On the other hand the learned counsel for the respondents has supported the order passed by the learned single Judge.

Considering the facts of the case, we are of the view that the learned single Judge could not have asked the appellants to deposit the amount of Rs.15 lacs, especially when the learned Judge has accepted the grounds submitted by the appellants for setting aside the exparte decree passed against them. It is quite possible that after hearing the summons for judgment, the appellants could make out a case to get unconditional leave to defend the suit. In any event, it is too early to ask the appellants to deposit Rs.15 lacs. We, therefore, allow the appeal and set aside the condition imposed by the learned Judge. The appellants to file reply affidavit within two weeks from today. The appellants to pay costs quantified at Rs.25,000/- to the respondents within two weeks from today.

CHIEF JUSTICE

ABHAY S. OKA, J.